THE OPERATION OF THE SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS: 1981-1991

Miss Lynch - On behalf of you all, I thank Professor Pearce for the very profound introduction and also the President of the Senate for his perceptiveness and contemporaneous comments.

As Professor Pearce mentioned to you, the reason for my being the introducer of the next session is that I was inaugural secretary to the Committee. As with him, I was very enthusiastic and I am delighted 10 years later that the hopes that we felt particularly, say, at 3 o'clock in the morning when a report was hastily being prepared for tabling the next day, have now been realised. Like him, I think that the profound questions that he has put forward for discussion at the seminar will well be considered in the course of the day.

I now have pleasure in introducing to you the present Chairman of the Scrutiny of Bills Committee, Senator Barney Cooney. Senator Cooney is now the longest serving Chair of the Committee. It is also of interest to note that he has followed in the steps of the earliest Chairman, Senator Alan Missen, in that he is also Chair of the Legal and Constitutional Affairs Committee.

I am also delighted to welcome as the first commentator on the Committee, Mr Fred Chaney, formerly Senator Fred Chaney, whose instigation and conclusion of the whole process of the permanent establishment of the Committee as a Minister ensured at the time that the Committee was permanently established.

But now may I first introduce Senator Barney Cooney. His paper, I understand, will be an update of a very extensive paper produced by a former Chairman of the Committee, Senator Michael Tate. So not merely will it be useful in its own right, it will be useful in the continuation of the history that has now been unfolding. Thank you.

Senator Cooney - Thank you, Anne. It is sure to be a good paper because, as many of the people here know, perhaps from their own departments and what have you, it has not necessarily been written by the person that gave it. I am going to embarrass, of course, our present Secretary, Stephen Argument, by saying he has worked nobly to get this paper together and he has given it to me this morning. May I say a lot of his running has been taken already by Professor Pearce. The other thing I have to do, as Chairman, is to welcome everybody here today and as I look around there are some very eminent people. In fact, it is almost frightening to see who is here. I might sit down and not give it to avoid the comments. But may I welcome you all. And in that context and obeying union rules can I give particular attention to the outstanding statespeople who have come from other States. I did not say politicians, I said statespeople.

I have a list here. There is Adrian Cruickshank from New South Wales. From the Northern Territory there is Rick Setter. From Queensland there is Len Stephan and Jon Sullivan. From South Australia there is John Burdett. From Tasmania there is the Honourable Hugh Hiscutt. And we have to give special mention to Victoria because of sheer prejudice on my part! So welcome Ken Jasper, Hayden Shell and Victor Perton. And from Western Australia there is Tom Helm and Bob Bloffwitch.

And may I welcome also Lord Thurlow. It is great to see you here. I think you have travelled further than anybody else and the cricket has not even started. So it shows the nobility of it all!

While I am on that I might as well get it all over and done with now. There are a few other people we ought to thank. Dennis Pearce, of course, was our first legal adviser, and he was followed by Mr Jim Davis. He was Mr Jim Davis when he took it on but he is now Professor Jim Davis. It is great to see you here. You will be talking later on and you have given mighty service to the Committee.

While you were away furthering your knowledge, Professor Doug Whalan took over. And besides Stephen Argument, our present Secretary, I would like to acknowledge our earlier secretaries - Ben Calcraft, Andrew Snedden, Giles Short, Robert Walsh, Derek Abbott, John Uhr and Anne Lynch herself, who was the original Secretary of the Committee.

So I think that it is proper on an occasion like this that all those people are acknowledged. May I also acknowledge the splendid efforts put in by my fellow senators who you will be hearing from later on. In my view it might sound a dry committee but I think it is quite an outstanding committee. It is a very, very pleasant Committee to be on. And even though we have to get there at half past eight on a Wednesday morning and get away fairly early, I have always found it a mighty pleasure. So can I thank my fellow senators who have been on the Committee with me.

This the tenth anniversary. As I say, a lot of this has already been spoken about by Dennis Pearce but I think nevertheless it would be worth just adding a few things. It was on 9 June 1978, on the motion of the then Senator Fred Chaney, who is now Mr Fred Chaney, Member for Pearce, that the following matter was referred to the then Standing Committee on Constitutional and Legal Affairs. It was to inquire into the desirability and practicability of referring all legislation introduced into the Parliament to a committee of the Senate for the purpose of examining the legislation and reporting to the Senate as to whether there were provisions in the Bills, whether by express word or otherwise which (a) place the onus of proof on a defendant in a criminal prosecution; (b) confer a power of entry onto land or premises other than by warrant issued according to the law; (c) confer a power of search of the subject, land or premises other than by warrant issue according to the law; (d) confer a power to seize goods other than by warrant issued according to law. They are the very fundamental principles that we live by in this society and which, hopefully, we will continue to live by.

The next one is in a different category - (e) purport to legislate retrospectively; and after that to (f) delegate authority to amend any Act of the Parliament of the Commonwealth, or to create exemptions from the operations of any such Act, by means of subordinate legislation. That is where a department may have power under an Act to change the effect of the Act itself by passing a regulation.

The next one is to (g) authorise administrative decisions affecting the rights and liberties of the subject without prescribing objective criteria to govern such decisions or without providing a right of appeal to a court or competent tribunal. Next is to (h) affect the liberty of the subject by controls upon freedom of movement, freedom of association, freedom of expression, freedom of religion or freedom of peaceful

assembly. They are all the sorts of concepts that we are used to and which, hopefully, we put into practice.

The last one is (i) otherwise to trespass unduly on personal rights and liberties, or make the rights and liberties of citizens dependent upon administrative rather judicial decisions. After a short inquiry, the Constitution and Legal Affairs Committee tabled its *Report on the Scrutiny of Bills* on 23 November 1978.[1] Then a history followed which you have been told about by Dennis Pearce.

However, the actual tests that were the first ones adopted were that the Committee was to see whether or not, by express words or otherwise, legislation trespassed unduly on personal rights and liberties; made rights, liberties and obligations unduly dependent on insufficiently defined administrative powers or non-reviewable administrative decisions; or inappropriately delegated legislative power or insufficiently subjected its exercise to parliamentary scrutiny.

As a consequence of the Constitutional and Legal Affairs Committee's report, a Standing Committee on the Scrutiny of Bills was first established by a resolution of the Senate on 19 November 1981.[2] Professor Dennis Pearce has already given you a very good idea of the struggle involved in getting the Committee from the point of being a recommendation to the Senate to being a reality.

I believe that my former Senate colleague Fred Chaney - now Member for Pearce might I say, and I do not know whether the connection that he had with the original Dennis Pearce has led him to success in the House of Representatives - but in any event he will give you some further insights into that struggle. Both Professor Pearce and Mr Chaney were here at the time and they are in the best position to tell you about the blood, sweat and tears involved in getting the committee established.

I think people can be overpraised at times, but I notice in the next section of the speech there is a mention of Alan Missen. Great tribute has already been paid to him by Dennis Pearce. I do not want to talk about what Dennis Pearce talked about there,

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1 Parliamentary Paper No. 329 of 1978.

2 *Journals of the Senate,* No. 76, 19 November 1981, pp 675-77.

but I think Alan Missen was one of those great parliamentarians who, although he had the ability perhaps to take a ministry, saw his task and his career as being that of a parliamentarian. That meant looking at, examining and making sure that legislation served the community and that the great concepts we have inherited from a number traditions were not betrayed. I think he suffered because of that. He is an outstanding example to us and it is proper that we do remember him today.

I notice that we will also pay tribute to the hard work of Senator Michael Tate, and that has already been mentioned before. As a result of ministerial commitments he could not be with us today. He has asked me to pass on his regrets to you. I know that he is very disappointed that he could not be here. Might I say that I saw him earlier at the swimming pool this morning and he looked quite relaxed! I do not want to give him up or anything, but he is obviously in the House.

A main purpose of this address is to update a paper on the operations of the Committee which Senator Tate presented in 1985.[3] That paper, which we have come to know as the operations paper - I am sure you all know about the operations paper, because Stephen says you do - has always been the first port of call for people who want to know about the operation of the Committee. Though it will continue to be an essential reference document on the work of the Committee, there are things which must be added, and this occasion provides a good opportunity to make those additions.

For the first six years of its operation, the Scrutiny of Bills Committee was the creature of a Senate resolution - Dennis Pearce has touched on this - and later a Senate sessional order. The relevant resolution or sessional order both established the Committee and set out its terms of reference and methods of operation. A consequence of this method of establishment was that the Committee had to be re-established at the commencement of each new parliament. However, on 17 March 1987, and anything that happens on 17 March must be a great occasion, the Committee became a permanent feature of the Senate committee system with the adoption of a new Senate standing order 36AAA.[4] Our AAA rating has since been taken away and

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3 *The Operation of the Senate Standing Committee for the Scrutiny of Bills, 1981-1985*, Parliamentary Paper No. 317 of 1985.

4 *Journals of the Senate*, No. 169, 17 March 1986, pp 1676-8.

we are now simply standing order 24, which does not look quite so grand. Standing order 24 provides:

> At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of Bills introduced into the Senate and in respect of Acts of Parliament, whether such Bills or Acts, by express words or otherwise:
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> (i) trespass unduly on personal rights and liberties;
> (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
> (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
> (iv) inappropriately delegate legislative powers; or
> (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Pursuant to the Standing Order, the Committee has six members, three nominated by the Leader of the Government in the Senate and three nominated by the Leader of the Opposition in the Senate or by other parties or independent senators. The Committee is required to elect a Government senator as Chairman and, as such, he or she has a casting vote when the Committee is equally divided. We just qualify on the grounds of proper division of the sexes; Senator Crowley has been chair for a while. However, as I will outline in due course, the relative numbers of the political groupings represented on the Committee have proved to be of little or no significance to its operation. Co-operation across the political groupings on the Committee is and always has been a feature of it.

Under standing order 24, the Committee has the power to appoint a legal adviser and that has always been crucial to its work. You heard Dennis Pearce on this - without the legal adviser, the Committee would be quite ineffective, and without the Secretary too it would be quite ineffective, I feel. I take this opportunity to record the appreciation of the Committee for the hours of hard work, largely undertaken over weekends, put in by these three eminent legal minds, Professor Pearce, Professor Davis and Professor Whalan. I also record our gratitude to the Law Faculty of the Australian National University, from whence they have all been poached.

I will quickly tell you about how the Committee works. When a Bill is introduced in either House of Parliament, copies are provided to the Committee. On the Friday afternoon of every parliamentary sitting week, copies of all the Bills introduced that week are bundled up by the Committee secretariat and sent out to the legal adviser for examination and report. Over the weekend, the legal adviser examines each Bill against the five principles which I have already read out. On the Monday morning, the legal adviser provides a written report to the Committee in respect of each of the Bills, advising whether or not they offend against the Committee's principles and, if so, in what way. On the basis of the legal adviser's report, the Committee Alert Digest is drafted for consideration by the Committee at its regular meeting on the Wednesday morning of each sitting week. That document, which is generally tabled late on the Wednesday afternoon, deals with all the Bills introduced in the preceding week. In it the Committee sets out its comments in respect of each Bill. Adverse comments are set out by reference to the relevant principle.

Once the Alert Digest is tabled in the Senate, any comments on a Bill are formally drawn to the attention of the Minister responsible for it by the Secretary to the Committee writing a letter to the office of the relevant Minister. The Minister is invited to make a response to the Committee's comments. Given the necessary time constraints, which the legislative process generates, these comments are requested by the following Tuesday, in order that the Committee can consider them on the following day at its regular Wednesday meeting.

I will just make a few points about that. You can see that it is a fairly rapid process and it goes through quite quickly. Dennis Pearce said before that it is a pity that there is not a greater input from outside the Committee and I agree with that. It would be good if that could be done. Indeed, there are some people here today who have from time to time written to us.

For example, I notice that Robert Gardini is here. He has attempted, from time to time, to have an outside input into the Committee. I think the Committee has to look at ways in which it will be able to accommodate that. People from outside get the Bill after the Committee receives it and quite often the whole process has been gone through before anyone from outside has a chance to comment on it. I think that is something for the Committee to look at and to see what can be done about it. If it has

made its recommendations, and the Bill has gone through and been made into an Act in the time that it sometimes takes, it is a bit difficult to expect people from outside to have an input. I think that is the way the Committee ought to go and in that I agree with Professor Pearce.

When the Committee receives a response from a Minister, that response is reproduced in a subsequent Report. In its Reports, which are also tabled on a weekly basis during sitting periods, the Committee restates its concerns about a Bill. It refers to the relevant ministerial response and makes appropriate comments where there is a difference of opinion between that of the Committee and that of the Minister.

It is important to note that, in reporting to the Senate, the Committee expresses no concluded view on any possible offence of provisions. Given the nature of the Committee's brief, these are matters which are ultimately for the Senate to decide. So the function is to raise issues which the Senate can reject or accept.

The Committee's non-involvement in the final decision as to whether or not a provision in fact transgresses against the principles it is required to consider is important for another reason. Since its inception, the Committee has operated on the basis that it keeps party politics at bay. In that, I think it has fulfilled very well the fears that members of the Senate had when this issue was first raised, and which Professor Pearce told you about, where people were very concerned that it might not continue on this basis. Votes on the matters before the Committee rarely, if ever, occur. By confining itself to matters of scrutiny against specific tests, upholding civil rights, and by avoiding the expression of a concluded view, it is easier for the Committee to maintain this consensual approach.

I would now like to turn to the effectiveness of the Committee. There are some statistics which you may want to ask about. I have never been a great believer in statistics - they remind me too much of economists. It may be that the business of legislation is too complex to allow for indicators of the Committee's performance. For instance, it is a fact that no matter how offensive the Committee might find a provision, the decision as to whether or not that provision passes into law is a matter for the Parliament. This is the way that it should be. Often what is involved is the balance to be struck between the public interest in preserving individual rights against

the public interest in meeting community needs. That is really what the Committee is doing the whole time. It has to ask: does this intrude on individual rights too much, if it does, and you want to do something about it, would the remedy suggested impact too much on the public interest in meeting community needs of what Parliament is about? The Parliament is the institution best placed to balance these interests. It is the Committee's role to highlight these issues, so that Senators are aware of them when making these sorts of decisions about legislation.

Over the past 10 years, the Committee has observed a passing parade of problems (and potential problems) in the legislation which has come before it. Those of you who avidly read our Alert Digests and Reports will be familiar with such terms as 'legislation by press release', 'Henry VIII clauses' and 'reversal of the onus of proof', as well as the kinds of provisions that manifest these problems. You really cannot get onto the Committee until you have learnt those sorts of phrases!

The Deputy Chairman of the Committee, Senator Amanda Vanstone, will deal with these sorts of issues in more detail in the second session. It is over to you to do the hard bit, Amanda! I do not know whether it is proper to say that she has been a great Deputy Chairman. Amanda says I should say that; I did not want to give her any more credit than the rest of the members of the Committee but I acknowledge that role of hers.

Clearly, the Office of Parliamentary Counsel and, to a lesser extent, the instructing departments do pay attention to what the Committee has to say. We hope that the First Parliamentary Counsel, Mr Ian Turnbull, will speak more about that later. However, I would like to mention an aspect of Commonwealth legislation which has caused concern in recent years, that is, the inaccessibility of legislation. In Victoria they seem to do it better because they keep amending things down there, or they did in my day when I was practising there. I do not know whether it is still the same but it was good because you could get to the legislation.

First, there is the question of physical accessibility. In recent years, the Committee has observed an alarming trend to what has been called 'quasi legislation'. Briefly, this is a tendency to legislate less by Acts of the Parliament and by regulations and more by ministerial and departmental guidelines, directions and determinations.

This trend causes all sorts of problems. However, in terms of accessibility, it can mean that the laws by which people are expected to abide and to run their lives can be contained in instruments which they are neither aware of nor have access to.

The point is that, if you are going to have to obey a law, you ought to at least know where it is and what it is. It is always nice to know what you are being fined or imprisoned or punished for.

This is not an acceptable situation and leads to my second accessibility point. The Committee has indicated in the course of this year - and I suggest that there is judicial authority for the proposition - that if people in the society are to be expected to operate within the laws of that society, then they have a right to know what those laws are or, at least, a right to be able to work them out.

The Committee is increasingly inclined to point out that, in the case of some of the laws which are on the statute books and which amend laws already on those statute books, the law is very hard to work out. This is particularly so, given the complexity of some of the drafting and the seemingly low priority accorded to reprinting legislation.[5]

That is very well put, Stephen. I want to also say, in regard to running this cost of justice inquiry at the moment, that, if Parliament and the Executive - and the judiciary in their own way - add to the complexity of the law and to the volume of law and to what we might do and what we might not do and that becomes inaccessible either because it cannot be understood or because it cannot be found, then the cost of justice is to go up. Therefore, I think the point about accessibility is one that ought to be emphasised.

In making this comment, I acknowledge the fine work of the officers of the Parliamentary Counsel and also the initiatives of the Social Security Department and others in the area of plain or clear English drafting. I hope the Committee will continue to identify what it perceives to be problem areas in terms of drafting and will continue to point out the need for the law to be more accessible.

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5 See the Committee's *Alert Digest No. 4* and the *Fourth Report of 1991,* in relation to the Australian Capital Territory (Electoral) Amendment Bill 1991, and *Alert Digest No. 5* and the *Eighth Report of 1991,* in relation to the Student Assistance Amendment Bill 1991.

The next 10 years are very much into the home stretch now. As the Committee contemplates its first 10 years, the next 10 promise new challenges. Recent changes to the way that the Senate and its committees deal with legislation is one such challenge. I understand that my colleague, Senator Robert Hill, will address these issues when he speaks to you this afternoon. I would like to say, however, from my completely unbiased perspective, that the Scrutiny of Bills Committee retains a vital scrutiny role under the new regime. However, I suggest that it is important that the Committee be prepared to adapt in order to play as effective a role in any new system as it can.

With the new system in the Senate that we have now, where you refer certain Bills to the legislative and general purpose standing committees, there is a chance for people outside the Parliament to have a direct input to the legislation that comes before Parliament. I think that has been a very good thing and it is the sort of thing I was talking about before. There is, however, more opportunity for people outside in the private sector and elsewhere to have an input through the standing committees considering a Bill that is sent out specifically from the Senate than there is in the system of Scrutiny of Bills, where the process has to take, by necessity, a very short and truncated time.

The other major area of challenge arises as a result of the ground swell of interest from other jurisdictions in the establishment of similar committees. This is underlined by the presence of so many interstate parliamentarians here today. I believe that my committee colleague, Senator Rosemary Crowley, will discuss the interest from other jurisdictions later in the seminar. The outside bodies, the private sector, and people from the various departments should have more access to this Committee. I keep coming back to that theme. It is a bit hard to work out how it should happen, and perhaps that will arise through some discussion, but I think this Committee has been a successful one.

The issue of liberties, the issue of what rights we have and should not have, and the protection of those is not an issue that raises a great deal of enthusiasm, unless a specific example arises through something that happens in the community. But when you have this delicate balance between individual rights and the needs of the community, and considering those, neither one is absolute, just as the pursuit of truth is not absolute.

I am not sure whether it has got a great deal of relevance, but there is a great quote from Vice-Chancellor, Sir Knight Bruce in a civil case called *Pearse v. Pearse.* The Vice-Chancellor said:

> The discovery and vindication and establishment of truth are main purposes certainly of the existence of Courts of Justice; still, for the obtaining of those objects, which however valuable and important, cannot be usefully pursued without moderation, cannot be either usefully or creditably pursued unfairly or gained by unfair means, not every channel is or ought to be open to them...
> Truth, like all other good things, may be loved unwisely - may be pursued too ... keenly - may cost too much. And surely the meanness and mischief of prying into a man's confidential consultations with his legal adviser, the general evil of infusion reserve and dissimulation, uneasiness, and suspicion and fear, into those communications which must take place, and which, unless in a condition of perfect security, must take place uselessly or worse, are too great a price to pay for truth itself.[6]

It might be worth while to say in conclusion that what this Committee does is to try to achieve that great balance. I suppose if you are running a department it seems proper that you take certain procedures to get to a very good purpose. But if that purpose costs too much in terms of individual rights, then that purpose is just costing too much.

Miss Lynch - Thank you very much. Both you, Mr Chairman, and the President of the Senate mentioned that the people who are, I suppose, eligible to speak on the establishment of the Committee and its early and sometimes painful days, were those who were there at the time. I was there, and I would therefore like to introduce the next speaker by saying that if it were not for Mr Fred Chaney we would not have a committee. He proposed it, he fought for it; he was an active member of the Constitutional and Legal Affairs Committee, which first recommended it. He then became a Minister. I know just a little of the contribution he made to ensure the proper working of the Committee and its validity as an institution. However, I know relatively little about it; suffice it to say that I am prepared to say that if it were not for the Hon. Fred Chaney we would not celebrating even one year of the Scrutiny of Bills Committee, much less the 10.

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6 (1846) 63 ER 950, at p 957.

Therefore, it gives me great pleasure to introduce him very appropriately as the first speaker after the present Chairman of the Committee. I do hope he will give us even more detail of the hardships he had to face as the link between the Parliament and the Executive, consisting of both the Ministry and the bureaucracy. May I welcome on your behalf Mr Fred Chaney.

Mr Chaney - Thank you, Anne, ladies and gentlemen. We do not really have a family history in the Chaney family but I am trying to get one going. My father's oral history does not seem to be written down in a very biblical way, but I hope it will be said of me in the family history that I begat Freddy and Gervase and Patrick and that I begat this Committee. Tribute can then be paid to Dr Smith in New Guinea, who delivered Freddy, and Dr Smith in Perth, who delivered Gervase and Patrick. I think tribute can continue to be paid to Senator Missen, who delivered the Committee. It would otherwise been stillborn after the point of conception, because its establishment required some vigorous and independent action by senators against the wishes of the then Executive Government of which I had become part.

I would like to say a little bit about why the Committee came about. In current political debate there is a lot of talk about generational change; I have heard Dr Hewson using that expression quite often over the last week. I must say that, by 1978, I was convinced that, in parliamentary terms, we were undergoing something that seemed to me like a generational change. We were moving from a group of senators who could read, to a group of senators who perhaps could but did not. This seemed to me to have serious implications for the operation of the democratic process.

I was very impressed by a number of my elders and betters when I arrived in the place. They came from across the political spectrum. On the Labor side, I would pick out, as personifying what I am talking about, Senator Jim Cavanagh, a member of the Whitlam Government but a man I remember essentially as a parliamentarian. On our side, I would personify it by two names - those of the late Sir Reginald Wright and Alan Missen. Alan was a newcomer like me, but he very quickly achieved the patina of an ancient senator and proceeded to behave in an obnoxious and unreasonable way, just like Senator Wright. This meant that he was a very effective parliamentarian.

The truth is that you had a group of men who looked carefully at legislation and who were quite prepared to get up and be very difficult about what they saw as breaches of the principles that should be contained in legislation. I must say that I enjoyed, as a spectator, watching them harass various Ministers who had brought legislation - which often they had not read - into the Senate. I then enjoyed it rather less when I was a Minister being harassed by them.

It seemed that, with the changing pressures of politics, less and less time was being devoted by the new senators to the laborious and exhausting task of careful scrutiny of legislation, and that we were becoming more and more politically based in our activities. Senator Peter Durack and various other people are exceptions to that but I do think that there was occurring and there has occurred a generational change.

It seemed to me that this was potentially a bad thing for the Australian community, something that would result in even worse legislation than we have. I think that a lot of the legislation that we have is pretty dreadful, in a technical sense - a bonanza for lawyers but certainly not a bonanza for the citizen. It seemed to me that, unless we could ensure that the parliamentary scrutiny process was improved, we would not be doing our job.

I would agree with the people who have already said that the Committee would not operate without professional help. Essentially, what was required was for somebody to do the sort of reading which, perhaps in a more leisurely age, was done by the Jim Cavanaghs and the Reg Wrights, and which enabled them to bring to the attention of their colleagues, in a very powerful way, inadequacies in legislation.

I think that those who are concerned about the parliamentary institution can learn something from the history of this Committee. One thing is that a relatively obscure backbencher can have an influence on the way the institution operates. When I put forward this proposition, originally in a speech in February 1978 and then in a formal motion later in the same year, I had been in the Senate for less than four years and it was possible to get one's colleagues to focus on a proposal for change. We used the existing committee system (which again had been forced upon the Government of the relevant day by senators) to examine this proposition. Indeed, I had a wonderful and unusual chance to see both sides of the operation.

Shortly after the Senate committee commenced its consideration of the resolution that has been referred to this morning, I was appointed to the Ministry. This, some people say, is on the basis that, if you are enough trouble, that is one way to shut you up. I then sat in the Fraser Cabinet room as a non-Cabinet Minister and listened to the discussion of the proposition that we should have this Committee as was recommended by the Constitutional and Legal Affairs Committee. I then was in the embarrassing position of having to come into the Senate to defend a decision which I totally disagreed with: to oppose the establishment of the committee that I had advocated.

I must say that it gave me great pleasure to find that senators really were not terribly impressed by the Executive Government's decision. They, in fact, took it into their own hands to establish this Committee, originally through putting its functions into the Constitutional and Legal Affairs Committee. I think the first thing to remember about it is that this was done not at the behest of or with the approval of the Executive Government, but against the objection of the Executive Government. Of course, the Executive Government's concern was that the legislative process would be slowed down, and effective and efficient government would be impeded.

I must say that the contribution of speedy passage of legislation to effective and efficient government seems to me to be rather doubtful. If you examine current parliamentary records of the number of second bites we are taking at legislation, the number of times we are having to re-amend amendments, I think you get some sense that perhaps the process is still in fairly dramatic need of improvement.

So the first point that I would want to make, to an audience which I think is not much made up of politicians or of members of parliament, is that it was Parliament itself which took this initiative; that it had to overcome Executive resistance, even though the Regulations and Ordinances Committee provided a very close and long operating precedent; and that it needs to be noticed that there is no shortage of power to make changes if members of Parliament really want them.

Politicians who complain about the lack of power of Parliament should be ignored, because they are simply complaining about themselves. There is no shortage of power in Parliament. We proved that in 1975, to the considerable hostility of at least

half of my colleagues in the Senate, when we got rid of the Whitlam Government. The fact is that there is enormous power vested in the Parliament, and to the extent that power is not used, that is a matter for decision by members of parliament. I would like to address that question very briefly a little later.

The second major thing that I want to make some comment on this morning is my personal view that, in the system of government in Australia, we need to extend the role of the people's representatives rather than the reverse. We have hundreds of thousands of public servants and we have a relative handful of politicians - most people say too many, of course. But if you think about it, you realise that the elected element of government is surprisingly small. I come from Western Australia, a long way from Canberra. I have in some respects - not in all respects - traditional Western Australian attitudes of distrust against central government. I must say that my early years here in Parliament confirmed that mistrust.

I think I can best summarise that by referring to the lesson I got from an officer of the Senate who was servicing the Constitutional and Legal Affairs Committee in my time as a member. In a very instructive conversation with me, he contrasted his life as a public servant in Canberra with his life as a public servant on Norfolk Island. He said, 'It was terrible on Norfolk Island, you actually had to walk out of your door in the morning and face the people who were affected by what you had done'. He said that, I might say, in a most understanding way, but I think it is true.

I think it is unfortunate, but there is a contempt for Australia which runs through our bureaucracy. It is a very unfortunate thing that there is a genuine contempt for the efforts of the ordinary men and women of Australia among those who are paid handsome salaries by them, given extraordinary security of tenure, and generous retirement benefits.

The role of the elected people in this House, who are, of course, among the most despised class in Australia, is to give the people some say. It is my firm personal belief that by expanding the role of Parliament, provided we do it properly, we can increase the rights of the people of Australia to have a say in their government.

We have good politicians and bad politicians here, of course. One of the outstanding new recruits, I think, from our side of politics, is Peter Costello. He made a wonderful maiden speech and then he said something like this, 'In the struggle between the Executive and the Parliament I stand for the Parliament'. I said to him, 'That is a great line, Peter. It will be interesting to see when we are in government and you are a powerful Minister what it means'. I think the truth is that there needs to be not just an assertion of authority by parliamentarians but, if we are to get a better value from our parliaments, also a change of attitude on the part of governments which can pick up from the bureaucracy that contempt for the will of the people which in the long run can be unhealthy.

My own experience led me, as a Minister, to continue to support things such as the Scrutiny of Bills Committee and, in part, my continued support for the Parliament was based on my personal experience of dealing with the backbench members of my party. I have previously paid public tribute to Phil Ruddock, still a member of this Parliament and a shadow Minister now. He was the chairman of my backbench committee when I was the Minister for Aboriginal Affairs, a task which I found joyful but arduous. I had a fine group of bureaucrats in the Department and we worked very hard to ensure that legislation we brought into the Parliament was as well prepared as possible. It went through all of the sieves: through the Department, often through the course of long public consultation as well, the Cabinet, the party room, the legislation committee of Cabinet. Then, it having gone through all the sieves provided by the experts, I would take it to my backbench committee. There was not much point in taking it to the Parliament, because the Parliament's consideration of the Bill was usually fairly meaningless.

But when the Bill was actually exposed to a group of elected members of Parliament led, in this case, by Phil Ruddock, it was extraordinary how effective they were in finding the flaws and in improving what we put forward. I never took a Bill to that committee which left the committee in the same form. The committee was always able to make suggestions to me that improved the Bill. For the life of me, I cannot see why we have a system in which governments believe that the protection of the often appallingly convoluted drafting of particular Bills is a matter of honour and a matter of government survival.

I simply put the view to this group that the Scrutiny of Bills Committee is, in a sense, just the tip of a potentially very useful iceberg. The Scrutiny of Bills Committee in its 10 years has shown its capacity to contribute quite usefully to taking objectionable features from some Bills.

The capacity of the parliamentary process to improve Bills, to improve legislation generally, is still incompletely understood by government. I totally support the efforts the Senate is currently making to subject legislation to more detailed committee consideration.

I must say that I think that a good deal of the credit for that change should go to the recent Chairman of Committees, ex-Senator David Hamer, who worked for the whole of the period that I was Leader of the Opposition in the Senate to convince his Senate colleagues that we should go down this track. He did so with my very strong support, but he did it on the basis that it was something that should come not from the Executive but from the Senate itself.

And it has come from the Senate itself. I think it is the next stage in making Parliament a more rational place, a place where senators do one of the many jobs that they are elected to do better than they have been able to do in the past. I think it is a step towards giving the people of Australia a slightly greater say in their futures.

The only cautionary note that I would like to throw in is the reality of some of the parliamentary scrutiny which is imposed or which is provided for. Almost every piece of legislation seems to provide some parliamentary role. Reports are to be tabled in Parliament. Parliament has the power of disallowance. Parliament has this role or that role. I think we need to watch the extent to which we provide for functions for Parliament which in the end cannot be performed by parliamentarians but which are simply handed to a new bureaucracy which belongs to the Parliament itself.

The Scrutiny of Bills Committee is an interesting example of how you avoid simply producing another bureaucratic mechanism because essentially the professional advisers do much of the detailed work which enables sensible, useable information to be put before senators so that they can make a personal judgment and give genuine personal endorsement to what has been put forward.

But my own view as to the extent to which we can improve the performance of Parliament is one which is tempered by the reality that once you get to the point that you are putting functions on senators or members of the House of Representatives which in fact is physically impossible for them to fulfil because of the volume of material, the volume of work and the multiplicity of tasks that you are performing, then you are holding out the promise of simply a new form of 'the new despotism'.[7] You are simply offering another set of faceless, nameless bureaucrats, a decision making power over the people of Australia where there is no accountability.

So I offer that caution as an enthusiastic exponent of the parliamentary process. I hope that Senator Amanda Vanstone and the other members of parliament who are participating today have the same opportunity as I have had to see this debate from two sides of the fence and I hope that when they do that they will maintain their same enthusiasm for the involvement of Parliament.

I think it is a very, very important institution, one that we have underused and one which I think has been contributed to much more by the Senate than by the House of Representatives of which I am now a member. Thank you.

Miss Lynch - After the typically thoughtful and thought provoking speech from the person who has put his money where his mouth is over time, I now have pleasure in introducing a person who has been cast almost as the enemy in the context of the discussions we have had so far. Nonetheless, on behalf of you all I would like to welcome Mr Michael Sassella, who is Principal Adviser in the Legal Services Group of the Department of Social Security.

Much has been mentioned today about the input that is desirable from the public to their elected representatives. I think that committees like the Scrutiny of Bills and the Regulations and Ordinances, even if they cannot have the greatest input from the public, nonetheless perform a very important function in, as I have often wanted to call it, burrowing into the bureaucracy. As a representative of the bureaucracy into which the two Committees burrow, welcome, Mr Sassella.

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7 Lord Hewart of Bury, *The New Despotism* (1929, Ernest Benn Limited, London).

Mr Sassella - Early in 1988 I began working as branch head for the legislation program of the Social Security portfolio. I had not previously done legislation work and was unprepared for the first Scrutiny of Bills Alert Digest which arrived and had some not very welcome comments to make about one of our then current Bills. Was a 'Henry VIII' clause something to do with the Church of England, the Pope and annulments of marriages? It did not take me long to find out. What I also found out was that both the Minister and the Departmental executive took an active interest in the activities and the views of the Scrutiny of Bills Committee. With this came a task of accountability in advising the Minister on the terms of a reply to the Committee chairman, explaining the portfolio view of the matters of controversy.

I, and others in the portfolio concerned with legislation, have since that time awaited the Scrutiny of Bills Alert Digest on any social security legislation with interest. We usually know what will concern the Committee and we are seldom disappointed by the Committee's success in detecting and highlighting these matters.

This morning, though, I want to say something of the Committee's impact on the portfolio and its impact on legislation officers within the portfolio, say a few words on some issues raised by Senator Cooney and present some modest ideas about some minor suggested changes to the Committee's mode of operation.

Firstly, the portfolio. The Social Security portfolio is quite used to external scrutiny. This comes from such bodies as the Social Security Appeals Tribunal, the Administrative Appeals Tribunal and the Ombudsman. These are usually in respect of decisions made in the cases of individual people. The portfolio, therefore, is practised in self-examination and is relatively mature in accepting and acting on criticism. The Scrutiny of Bills Committee has, however, a different and potentially more powerful function in providing a possible preventive mechanism rather than, as in the cases of the above bodies, curing mistakes which have already occurred. To put it another way, if the Scrutiny of Bills Committee can directly or indirectly prevent the passage of a legislative provision which will cause problems in administration or equity terms in the future, it is desirable that it achieve such a result.

The inconvenience for the portfolio, of course, arises when the Committee forms and expresses its view. It usually happens when the Bill is public property but not yet

through Parliament. The Bill may, as has increasingly become the case in social legislation, be controversial. Added to the often highly political or coloured criticism or comment on the Bill, there is then also the civil libertarian critique from the Senate Scrutiny of Bills Committee. The portfolio has then to consider and respond, hopefully promptly, to the Committee. At worst, this is an inconvenience. It is, however, a justifiable and valuable inconvenience in requiring an accountability from the portfolio which may not be there otherwise.

A few words now about the legislation officers. This may be a bit self-indulgent, but the legislation officer plays quite a crucial role in the production of a piece of legislation. The legislation officer in a Commonwealth department is in a complex position. He or she is both a lawyer or a paralegal and policy officer, both a functionary and a protector of standards or principles, both an officer of the portfolio and, indirectly, a de facto officer of the Parliament. The legislation officer acts on instructions from a variety of sources: the Government via the Cabinet decision or other authority for a policy initiative; the departmental policy officers, many at very senior levels; policy officers from other departments, usually central agencies; and, in a sense, the drafters at the Office of Parliamentary Counsel. They, in turn, are in a very similar position to that of legislation officers.

It is often difficult, if indeed not impossible, to marry the demands made by all of the players. It is then something of a luxury to find time to consider the ethical dimension of the work. In addition, certainly in the Social Security portfolio, there has been a trend to legislate on more topics. This reflects a number of phenomena. Firstly, it stems in part from a need to ensure that decision makers are acting according to the rules of law. In social security, this means a trend to including in the Social Security Act matters which would have been handled administratively in the past. Secondly, it reflects a trend away from distribution of social security on a discretionary basis in favour of the provision of inflexible rules in the legislation. This is partly to cope with appeal bodies but also provides recipients of social security with more in the way of a right to what they receive. Thirdly, the trend to clear English legislative drafting carries with it a tendency to full coverage in legislation rather than leaving things unsaid. Fourthly, increasingly, legislation is introduced to reverse decisions of the tribunals which cause administrative difficulties or expose the Commonwealth to the risk of heavy expenditure.

Some of these phenomena have a greater value content than others. The legislation emerging in response to some of these phenomena and pressures will be less attractive to most legislation officers than other legislation. Strictly, of course, the public servant is a professional who should probably do as his or her masters bid, provided it is lawful. The terms of reference of the Scrutiny of Bills Committee can have the effect of empowering a legislation officer by providing a set of standards against which to measure the content of legislative proposals. By alerting portfolio clients to the potential problems of legislative proposals which may infringe the Committee's terms of reference it is sometimes possible to encourage clients to reconsider a proposal.

In general terms, I think it is true to say that many professional public servants appreciate the accountability standard provided by the terms of reference. To hark back to the Second World War, in a rather more ghastly sort of context I suppose, a defence of superior orders was held not available in the Nuremberg war crimes trials. There was held to be an ethical dimension. The same must apply at the end of the day to the legislation officer, and the Scrutiny of Bills Committee helps him or her to find it and to do something about it.

I have a few comments on Senator Cooney's observations. A number of his comments intrigued me when I read his paper last week. The first was something quite new to me. It was the description of the job of the Committee's legal adviser in having to assess and prepare a written report over a weekend on a week's complement of Bills. The capacity of the Committee to sift through a Bill and locate matters of concern has always impressed me. Most of us know that the often disjointed and user-unfriendly nature of amending legislation militates against quick and easy comprehension.

Professor Davis's task is more difficult than I had known, and he deserves great credit for the speed and quality of his output. I will make a suggestion later that, if taken up, might assist the legal adviser in this work. Meanwhile, it may be worth commenting on the encouragement the departments are now receiving from the Department of Prime Minister and Cabinet to produce a new and more helpful type of explanatory memorandum. As a result, Social Security, like other portfolios, is experimenting with the thematic presentation of legislative initiatives in its explanatory

memoranda. This entails the break from the tradition of sequential clause commentary in favour of the sequenced exposition of each legislative initiative included in a Bill. In the course of that exposition all clauses related to one initiative are discussed together, although often they appear in a disjointed way through a Bill for technical reasons. This also facilitates discussion in the explanatory memorandum of the context of the changes wrought by the Bill. The explanatory memorandum may become a more ready aid to identification and location of matters within the Committee's terms of reference.

Senator Cooney's comments on the Committee's effectiveness were interesting. For some of the reasons I gave above about the use of the Committee to the portfolios, I see it as effective from where I stand. As to its impact on Parliament and the Senate, I expect that it is also effective but these things are often an expression of faith. Busy senators who attempt to master a number of often complex Bills each sitting week must appreciate the pithy, pointed assessments on very fundamental issues provided by the Committee.

At the same time, I have been surprised by the infrequent reference to the Committee's assessments of social security legislation in Senate debate on our Bills. I believe that senators could make more use of Committee reports on our legislation. At the same time it is clear that the broad policy issues reflected in social security legislation excite senators in their speeches on those Bills and that that content captures attention at the expense of some of the civil liberty issues. Nevertheless, even in social security debates, occasional use is made of Committee assessments and this could be more pronounced in relation to the legislation of other portfolios. Of course, it could be, in our case, that senators find the Social Security Minister's responses to expressed Committee concerns totally satisfactory! I doubt that, though.

Senator Cooney comments also on the passing parade of issues and on how certain types of provisions come and go. This is another area where the Committee's role can be of great value in providing an overview of systemic trends in legislation. The Committee might take this activity further by issuing papers, or holding seminars or workshops not unlike today's, to discuss its global observations and to foster consideration of the reasons for trends and the value of persevering in the perceived direction.

Senator Cooney's comments on the accessibility of legislation were pertinent and mesh with a project under way in the Administrative Review Council. In the Social Security portfolio, statutory instruments are being used to replace the even more inaccessible policy manuals in areas where the issues are important but primarily administrative or managerial. These documents are frequently scrutinised by the Senate Standing Committee on Regulations and Ordinances. They should, therefore, have an air of respectability but the lack of coherent mode of access is a major problem which the forthcoming ARC report may help resolve.

The Senator Tate's 'Operations Paper' includes substantial material on the desirability of the Committee having a power to open up Committee meetings to experts and the public. As a means of raising the profile of the Committee and enriching its deliberations I would expect that there is much more to be said in favour of such a development than against it. Social Security at least would be happy to contribute to such a process as required.

It may also be worth considering requiring the portfolio to provide a statement in relation to a Bill dealing with matters in the Bill which may be seen to contravene one of the Committee's terms of reference. It would be a sort of environmental impact statement but related to the terms of reference. This could have several advantages. It would assist the Committee's legal adviser. It would also raise the portfolio's consciousness of the importance of the terms of reference, and it would bring forward the ministerial comments and justification of the controversial clause at an earlier stage for consideration by the Committee. Portfolios are now required to produce statements relating initiatives to such programs as the access and equity program and the Government's social justice statement. It would therefore be nothing totally new.

I just want to pick up on one comment made by Mr Chaney. His comment on the contribution of speed to the poor quality of legislation was spot on. The first item each session that we put on our list of items for the coming session are the errors that were perpetrated in the most recent batch of legislation. In the UK parliament, that parliament sits longer and passes fewer pieces of legislation each year and there is a more pervasive committee system in the lower house. Is it any wonder that (in Australia) legislation is often not right in the first place?

Just by way of conclusion, I am sure the portfolio sees the Scrutiny of Bills Committee as working well on a number of levels and I wish it well for the next 10 years. Thank you.

Miss Lynch - May I thank you very much for your most positive comments. I often think that legislation officers have a fairly bad time in the bureaucracy, particularly when they are dealing with risk managers who say, 'Yes, we know we should not do it but let us have a go and see what happens'. Unfortunately, the risk managers are often right, except that we are salvaging their errors years later.

We have about a 10-minute period for questions if you would be interested in taking up any of the points raised by our speakers this morning. Would you mind identifying yourselves both by your name and where you come from to assist *Hansard* because, as you may or may not be aware, though I imagine you are aware, we are having a full record of today's proceedings which will be sent to you in due course. I wonder if I might ask for questions from the floor of any of the speakers, or of matters generally.

Mr Stephan - I am from Queensland. The last speaker stated that scrutiny of bills would enable fewer mistakes to be made in legislation. I just wonder how long would be required to go through some of the bills to ensure that there would be not too many mistakes in the legislation, bearing in mind that some of the bills are quite lengthy and some of them are quite involved. Could we expect that in a week, could we expect it in a month? What time would you require?

Mr Sassella - It may be my fault, because I was not clear enough in the talk. I did not see the Scrutiny of Bills Committee doing that job on its own. Basically, the point I was trying to make is that in some other parliaments there is a much longer preparatory process before the passage of a Bill. The Scrutiny of Bills Committee could certainly play a role in that, within the terms of reference that it operates under. But committees not unlike the Senate committees that are currently looking at a lot of bills at the Senate stage I think are far more useful when it comes to the overall scheme of the bill. That Senate process in the Commonwealth at the moment sometimes holds up the progress of a bill for about a month, and I think that generally, from our perspective, the bills that have been held up by that process have been the better for it.

Miss Lynch - Perhaps Mr Chaney, with his views about speed of legislation leading to inaccuracy, might like to add to that.

Mr Chaney - Very briefly, I was very pleased that Michael Sassella agreed on that point. There is sometimes a view among politicians that bureaucrats conspire to hold legislation back so that it hits the Parliament with a very tight deadline. I have to say, Michael, that there is deep suspicion at times! My view is that, if we have the choice between a muddle or a conspiracy, we should go for the muddle every time.

If you look at the legislative program in the House of Representatives over recent weeks you will find major amendments to corporate law, taxation law and so on going through in a matter of minutes. To suggest that there has been an adequate opportunity to scrutinise that legislation is absurd.

I mentioned Peter Costello. He had two major items of legislation relating to quite complex issues, relating to property trusts and corporate law, over the last two-week period. I think that the time between the receipt of the legislation of the House of Representatives and consideration by shadow Cabinet and party room was three or four days. It then gets half an hour, 40 minutes, perhaps an hour and half in the House of Representatives. Unless at some point in the parliamentary process it is slowed down, there is no opportunity for external comment. There is no opportunity for sober assessment.

Anne gave me an estimate of the very high proportion of bills we now deal with which are simply tidying up the results of the rush of that process. That is very significant and that is why I think the attitude of the Executive Government is critical to further advance in the parliamentary process. You really have got to get to a situation where there is an acceptance from the Executive Government itself that it is in the interests of good government to slow that process down, as well as to expand it in other ways.

Mr Grant - My question goes to what Senator Cooney is talking about in the operations of the Committee and the machinations in the decisions of the Committee. To what extent, if at all, does party politics play a part in the decisions of Committee,

as to whether or not they breach those criteria set out in the Standing Orders regarding any offending clauses in a bill?

Senator Cooney - You can overpraise yourself on this and say that it does not. But I really do not think it has been a major problem at all. What do you think, Amanda?

Senator Vanstone - I think you are right. The closest I think we have come to blows - and it was nowhere near a case of coming to blows - was the legislation dealing with the limitations on political advertising. When we sat down and calmly reflected on that bill, we were able to isolate those portions which in a bipartisan way we could justifiably bring to the Senate's attention, and to see for ourselves where our political disagreements were and put them aside to be raised in the chamber or elsewhere, through the media. It does sometimes happen that it is a bit difficult to see the line between a political difference of opinion and one that is purely technical, but usually it only requires a bit of thought to isolate the technical aspect and put your political views aside to be brought to the fore in another forum.

Senator Cooney - I agree with that. By the very nature of the system you have got to be political in the chamber. I think the five criteria that are put there are very well-drawn tests. Most people believe, even if they do not practise the belief, in freedoms and non-arbitrary arrest and all that sort of thing. As Amanda says, you can go through the legislation, no matter how powerfully or strongly you might feel - and you should feel strongly - about its political purpose. People on the Committee, may I say, are very good members of their respective parties and do well in the chamber. But they have the ability - I am glad Amanda agrees with me on this - to set that aside in the interests of identifying those criteria we all believe in and applying them.

Mr Chaney - With Anne Lynch's permission, I am glad to make a supplementary comment. To some extent, you are looking at the easiest end of the spectrum with this Committee. As Barney Cooney has just said, you are dealing with principles which most people from right across the political spectrum would agree - freedom from arbitrary arrest and so on. The really impressive thing about the potential of Parliament is demonstrated by looking at very contentious issues which have been dealt with through the committee process. Let me give you three examples.

The $2 billion national compensation scheme put forward by the Whitlam Government, a very important part of its program, was put forward at a time of extraordinary political stress, 1974-75. The Constitutional and Legal Affairs Committee examined that. The Government members are worthy of mention, because two of them would be well known to you - Senator Button and Senator Grimes. The other was the then Senator Everett, a very, very capable QC, later judge, from Tasmania. That was a very important policy issue for the then Government. The Committee unanimously reported that the legislation should be withdrawn and redrafted. So, on a very contentious issue, at a very politically charged time, it was possible to get a view which was quite different from the Government view, on a bipartisan basis.

Another very contentious issue was the legislation for the trial of war criminals. I think Barney would agree and Senator Vanstone would agree that great passions were involved in that, with very powerful emotional issues in the Australian community, whether among the Ukrainian community or the Jewish community - very powerful arguments and passions running in the community. I think that the Senate committee consideration of that legislation was able to bring forward some ameliorating changes to that legislation, which did something to take some of the really difficult issues off the agenda.

Finally, let us take what I think was the most difficult exercise of parliamentary authority in my time in Parliament, the Murphy question - the *Age* tapes. One can only look with great admiration at the efforts made by the people on the committees that looked at that matter to deal with it in a responsible way. I think of the political courage of somebody like Senator Tate and how good it is that he went on to get ministerial office. He took a very difficult decision as a committee member, for which I think many people who are cynical about the political process would have destroyed his hopes of advancement within the Labor Government and so on.

I think that, when we examine the record of the committee process, it is extraordinarily consistent. I cannot think of a single bill that has been sent to a committee and that has not been changed by the majority view, usually the unanimous view, of the committee. This is still a very large and fertile field to be tilled.

Mr Cruickshank - I did want to ask a question about the examination, but I have a comment along the lines that you have just been speaking about, as Chairman of the Regulation Review Committee in the New South Wales Parliament. Yes, one does try to keep the political aspects of one's parties et cetera out of it, but sometimes the opposition comes from unexpected quarters. Particularly when you are on the Government side, you do find that, being a bipartisan committee from both upper house and lower house and both parties included, a lot of aspiring young politicians have their place in a queue and they are very loath to do anything that might upset that place in the queue. We have had the situation where we have agreement on all sides politically, except for some of our own who will not, to put it in their words, 'line up a Minister over an issue like this'. It is very unfortunate, but I think it tends to disappear as they mature and stay in parliament a little bit longer, if they stay there long enough. So I just wanted to say that we do have troubles like that at all levels. Politicians are born regulators and combined with one's political allegiance it does require some considerable maturation within the parliament.

I believe that one of the proposals is a requirement for a regulatory impact statement on rules and for them to be made available to the parliament and public. Does the Senate Committee believe that these procedures could usefully be adopted in making a bill? There is a lot more to that but I think I will just leave it at that.

Senator Cooney - I would like to be able to claim that, but I think that has got to be claimed by my colleagues from Victoria. You have got one down there, have not you? Would you like to comment on that, Ken?

Mr Jasper - We could not make a real contribution on that right now because of the time.

Senator Cooney - Well, I think it is a good idea and perhaps the Victorians can tell us about it after lunch.

Miss Lynch - I must confess I am suitably reproved, I just do not dare to call for more questions. However, I hope that people do not remain silent during lunch and these sorts of matters can be discussed informally. I would like to thank you all for your attendance at and contribution to the first session. I hope you will continue to

participate and enjoy the whole of the remainder of the seminar. May I, on your behalf, thank the three speakers we have had this morning, and the President of the Senate and Professor Pearce.

Luncheon adjournment